Argument before the Judiciary committee of the House of representatives upon the petition of 600 citizens asking for the enfranchisement of the women of the District of Columbia, Jan. 21, 1874

ARGUMENT 201 BEFORE THE Judiciary Committee OF THE HOUSE OF REPRESENTATIVES UPON THE Petition of 600 Citizens asking for the Enfranchisement of the Women of the District of Columbia, Jan. 21, 1874, BY FRANCIS MILLER, Esq., Associate Counsel with Hon. A. G. Riddlein the cases of Sara J. Spencer *vs.* The Board of Registration,and Mary Webster *vs.* The Judges of Election,now pending in the Supreme Court of the United States.

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ARGUMENT.

Mr. Chairman and Gentlemen of the Committee:

I appear before you to-day at the request of a large number of the women of the District of Columbia to submit to you a petition, numerously signed, asking such action on your part as will aid them in obtaining from the Congress of the United States a recognition of their right of self-government.

Three years ago these ladies appeared before your Committee, affirming that the Fourteenth Amendment to the Constitution of the United States recognized them as citizens and removed all obstacles to their exercise of the right of suffrage, and asking that Congress should so declare by a solemn legislative act. A majority of your Committee replied to that application in the following language:

"If, however, as is claimed in the memorial referred to, the right to vote 'is vested by the Constitution in the citizens of the United States, without regard to sex,' that right can be established is the courts without further legislation."

Being thus referred to the courts, the women of the District of Columbia presented themselves for registration as voters, and the registers refused to enroll them on the lists; they offered their ballots

at the polls, and the judges of election declined to receive them. They then went to the Supreme Court of the District of Columbia and in the cases of Spencer *us*. The Board of Registration and Webster *us*. The Judges of Election they brought the question of their rights before that tribunal. The highest judicial tribunal of the District, for adjudication, and they now return to the Committee bearing with them the decision, of that court embodied in their petition, in the following language:

"To the Congress of the United States:

"Whereas the Supreme Court of the District of Columbia, in the cases of Spencer against The Board of Registration and Webster against The Judges of Election, has decided that by the operation of the first section of the Fourteenth Amendment to the Constitution of the United States 'women have been advanced to full citizenship and clothed with the capacity to become voters;' and

"Whereas the same court further decided that 'the first section of the Fourteenth Amendment does not execute itself, but requires the supervention of legislative power in the exercise of legislative discretion to give it effect;' and

4

"Whereas the Congress of the United States is the legislative body having exclusive jurisdiction over the District of Columbia: therefore

"We respectfully pray your Honorable Bodies for the passage of an act amending and act entitled 'An act to provide a government for the District of Columbia,' approved February 21, 1871, by striking the word 'male' from the seventh section of said act, thus placing the constitutional rights of the women of this District as declared by its highest judicial tribunal, under the protection of the legislative power."

The Committee will perceive that in this petition there is no room for extended argument. We regard the argument as closed. The people of this District are the peculiar wards of the nation. Over them the Congress has exclusive legislative powers, subject only to such restrictions and limitations as the spirit of the Constitution and the recognized principles of all free government impose.

By virtue of this plenary and irresponsible power the Congrees of the United States legislated out of existence the old Circuit Court, which for more than sixty years had administered the laws of the District, and created the present Supreme Court of the District of Columbia as the highest, if not the sole, repository of judicial power therein. The right to appoint the judges of that court was given to the President, by and with the advice and consent of the Senate.

The President, in pursuance of the power thus conferred upon him, looked *everywhere* but in the District of Columbia for the persons who were to administer the laws of that Territory. He sought out from the great State of Ohio Chief Justice Cartter, whose clear, sound judgment and warm sympathy with everything that concerns the advancement of his fellow-men, enable him to look far beyond the prejudices of caste and sex, and, piercing through all shams and technicalities, to see and proclaim the everlasting truth. New York furnished Olin, and Virginia Wylie. At a later day, the President, going beyond the great lakes, summoned McArthur here; and still later, the broad savannas of Alabama were robbed that this District might be blessed with the serene wisdom of Mr. Justice Humphreys. To these five gentlemen were entrusted the judicial care of all the rights and interests of the people of this District, and before them the two cases above referred to were tried. They were argued at length, and counsel for the plaintiffs exhausted their best efforts in behalf of a cause dear to their hearts. The judges listened with the respectful attention due to a cause whose dignity and importance they recognized and acknowledged, and after full deliberation the unanimous decision of the court was given to the public.

The substance of that opinion is given in the petition, and it forms the basis of the application which is now made to the Committee. Therefore we come before you after having obeyed your directions of 5 three years ago, and submitted the question of the rights of the women of this District to vote to judicial determination before the court provided for them by the wisdom of Congress, and bring with us the opinion of that tribunal that we were correct in claiming that the Fourteenth Amendment clothed women with the right to vote, and affirming that all that is necessary to secure to them the full enjoyment of that inestimable privilege is, that Congress should provide the machinery necessary to enable them to exercise it.

We do not believe that the Committee intended to do a vain thing in sending us to the courts for the determination of the rights of women under the recent amendments, but we do believe that they were sincere in doing so, and are prepared to abide by that decision. Nor can we believe that either this Committee or the Congress of the United States will hesitate to protect any right of citizens of the United States, whether in the remotest of foreign nations or here, in the District of Columbia, under the immediate eye of the Government; especially they will not allow them to be deprived of their constitutional right of self-government from a failure on their part to provide the machinery necessary for its exercise.

But while we claim so much from the decision of the Supreme Court of the District, we must in candor and frankness say that we are not entirely satisfied with it. We rejoice that the mind of the court recognized the effect of the recent amendments so far as to see that by virtue of them women are advanced to full citizenship and clothed with the capacity to become voters, but we lament that

the judges did not follow out this conclusion to its logical results; that they thought the Fourteenth Amendment did not execute itself, but deemed it necessary that Congress should act in order to make it effectual. We hold that when women were declared to be citizens, and it was proclaimed that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," *eo instanti, every* law throughout the broad limits of the United States that in any way abridged the rights of a citizen fell utterly void and powerless.

Such a conclusion is supported by the recent history of the country. Within ten years past the colored men of the nation have *in some way* come into possession of the right of suffrage. It will be instructive to examine into the manner in which they became thus invested with that right, and from this example we may learn more fully to appreciate the effect of the recent constitutional changes upon the *status* of women.

Prior to the adoption of the Fourteenth Amendment, the question of suffrage was left entirely to the States. The only provision in regard 6 to that subject in the Constitution was contained in section second of Article I, in the following words: "The House of Representatives shall be composed of members chosen every second year by the people of the several States; *and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature*."

This language plainly remits the whole subject to the States, and Congress under it could have no voice in the question of who should enjoy or who should be deprived of the right of suffrage.

The right of Congress at this time to interfere in any manner with the question of suffrage must be derived from the Fourteenth and Fifteenth Amendments. To understand the effect of these amendments it is necessary to comprehend the exact origin of the right or power of voting. Attorney-General Bates, in his "Opinion on Citizenship," speaks of suffrage as a " *power*," and says that "it does not belong to all citizens alike, nor to any citizen merely in virtue of citizenship. This *power* always depends upon *extraneous facts* and *superadded qualifications;* which facts and qualifications are common to both citizens and aliens." (Page 16.)

By this view there is no right of voting inherent in citizenship, but the citizen must be clothed with this right by positive affirmative legislation before he can possess it.

The only other alternative view of this subject is, that suffrage is not only a *power* but a *right;* a right inherent in citizenship which can only be prevented from its legitimate operation by *negative, restrictive* legislation. As shown above, there was in the Constitution, prior to the Fourteenth Amendment, nothing to prevent the States from passing this negative, restrictive legislation, and in

the exercise of that right for a long time non-freeholders were prohibited from voting, and still later colored men were denied the right, and women still are under the ban of such legislation.

We claim, if the former view of suffrage be correct, that there is now no right on the part of the colored man to vote; and if the latter be true, that the colored man rightfully votes, and that suffrage can only be denied to women by a violation not only of all the principles of jusand free government, but of all proper rules of constitutional construction.

If we follow out Mr. Bates' idea on this subject, we must look in vain for any "qualifications" that have been "superadded" to the colored man, either by the Fourteenth or Fifteenth Amendment. Both those amendments are entirely *negative;* they are not affirmative legislation, conferring privileges, but are *negative,* denying the power of the States 7 to interfere with the enjoyment of the rights of citizens. The Fourteenth Amendment says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." But if Mr. Bates is correct, suffrage is *not* a privilege or immunity of a citizen unless it has been expressly conferred upon him, and therefore this amendment does not touch the subject. So the Fifteenth Amendment says: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Now, if the "right to vote" depends upon "superadded qualifications," here there are none, and the right to vote remains entirely unchanged in the States. Neither of these amendments says that any State shall be compelled to "superadd any qualifications" to those citizens who have not been previously clothed with this privilege, and the *status* of all citizens remains as it was prior to the adoption of the amendments; and if the view we are examining is correct, six hundred thousand colored men have been, by illegal votes, controlling the election of Presidents, Congressmen, Governors, and Legislatures for years past.

But if the other position be correct, to wit, that suffrage is a right inherent in citizenship, always existing, and ever ready to spring up unless restrained by negative legislation, then the recent history of our country is justified, the colored men of the nation are voting legally, and our President, Members of Congress, Governors, &&;c., are not holding their offices contrary to law. For by the Fourteenth Amendment all the restrictive legislation legally and constitutionally subsisting prior to its adoption became wrongful, and was at once stricken down and destroyed, and the right of suffrage ever inhering in the citizen, relieved from that restraining power, *immediately* sprang into full activity and vigor, and the colored man, expressly declared a citizen, without further legislation or any enabling act, entered at once upon the exercise of his high privilege of taking part in the government of his country.

But woman is as expressly declared to be a citizen as the colored man, and if the right of suffrage springs up in the one by virtue of this amendment it must in the other; and as the amendment has "enforced itself" against the constitutions and laws of more than one-half of the States of the Union with respect to the one, so it should enforce itself for the protection of the rights of the other.

It is urged that the Fifteenth Amendment was entirely unnecessary if the view of the Fourteenth here presented is correct. Well, admit that it was not necessary. It was very wisely said by Judge Swayne, of the Supreme Court of the United States, in the case of The United States *vs.* Rhodes, in answer to the argument that if the Thirteenth 8 HAmendment conferred certain rights upon the colored man it was not necessary to pass the Civil-Rights Bill, that "it was not necessary, but it was well to do it to prevent doubts and differences of opinion." But if the opinion of Attorney-General Bates (which is the only alternative to the one which we maintain) be true, then, as I have already shown, the Fifteenth Amendment is not only unnecessary, but it is utterly nugatory, useless, and of none effect, because it undertakes to protect the right of a colored citizen to vote, when no such right can exist unless expressly conferred, and none had been so conferred upon him.

On the principle enunciated by Mr. Justice Swayne, cited above, we ask of your Committee the passage of the law prayed for in the petition; not that we think it necessary to confer or enforce the right of women to vote, but "to prevent doubts and differences of opinion."

Mr. Miller was followed by Mrs. Sara J. Spencer, of Washington, D. C.; Miss Phoebe Couzins, of St. Louis, Mo.; Mrs. Frances Ellen Burr, of Hartford, Conn., and Mrs. Belva A. Lockwood, of Washington, D. C., upon the moral, material, and financial views of the subject.

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The Remainder of this Book States the value of Suffrage.